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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 ABDUL-KAHLIF CALHOUN,

11 Petitioner,

12 vs.

13 DOUG WADDINGTON,

14 Respondent.

Case No. 09-5211-RJB-JRC

ORDER ADOPTING REPORT  
AND RECOMMENDATION

15 This matter comes before the Court on the Report and Recommendation of U.S. Magistrate Judge  
16 J. Richard Creatura. Dkt. 24. The Court has considered the Report and Recommendation and the record  
17 herein.

18 The Report and Recommendation thoroughly discusses the facts and law at issue here, and it should  
19 be adopted. The petitioner raises four constitutional grounds for review: first, that petitioner's right to  
20 assistance of counsel was deprived; second, that Wash. Rev. Code § 9.94A.589(3) violated the petitioner's  
21 equal protection rights; third, that the failure to give *Miranda* warnings at the time of the petitioner's arrest  
22 violated his Fifth and Fourteenth Amendment rights; and fourth, that the search and seizure that led to his  
23 conviction violated his Fourth Amendment rights. Dkt. 24 at 7.

24 As to the first two grounds, the Report concludes that the petitioner exhausted his state court  
25 appeals, but that both grounds lack merit. *Id.* at 10-14. As to the second two grounds, the Report  
26 concludes that the petitioner has not exhausted his opportunities to appeal the issues to the state courts.  
27 *Id.* at 14-15. On these bases, the Report recommends denying the petitioner's writ of habeas corpus.  
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1                                    STANDARD FOR GRANTING A CERTIFICATE OF APPEALABILITY

2            The district court should grant an application for a Certificate of Appealability only if the petitioner  
3 makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(3). To obtain a  
4 Certificate of Appealability under 28 U.S.C. § 2253(c), a habeas petitioner must make a showing that  
5 reasonable jurists could debate whether, or agree that, the petition should have been resolved in a different  
6 manner or that the issues presented were adequate to deserve encouragement to proceed further. *Slack v.*  
7 *McDaniel*, 529 U.S. 473, 482-85 (2000) (*quoting Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)).  
8 When the court denies a claim on procedural grounds, the petitioner must show that jurists of reason  
9 would find it debatable whether the petition states a valid claim of the denial of a constitutional right and  
10 that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.  
11 *Id.* at 485.

12                                    DISCUSSION

13            The Report recommended dismissal of the first two grounds of the petition as being without merit.  
14 There is nothing in the record to suggest that reasonable jurists would debate whether the petition should  
15 have been resolved in a different manner, and the issues presented do not deserve encouragement to  
16 proceed.

17            The Report recommended dismissal of the second two grounds of the petition as unexhausted.  
18 That portion of the petition is therefore being dismissed on procedural grounds. There is nothing in the  
19 record that would support a conclusion that jurists of reason would find it debatable whether the petition  
20 states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable  
21 whether this court is correct in its procedural ruling. The Certificate of Appealability should be denied.

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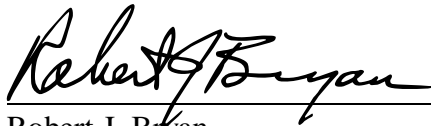
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1 The Court hereby **FINDS** and **ORDERS**:

- 2 (1) The court adopts the Report and Recommendation (Dkt. 24);  
3 (2) Petitioner's Amended Petition for Writ of Habeas Corpus (Dkt. 11) is DENIED;  
4 (3) A Certificate of Appealability in this matter is DENIED; and  
5 (4) The Clerk is directed to send copies of this Order to plaintiff, all attorneys of record, and to  
6 the Hon. J. Richard Creatura.

7 DATED this 18<sup>th</sup> day of November, 2009.

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10 Robert J. Bryan  
11 United States District Judge  
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